

REMARKS

Claim 31 is amended. Claim 34 is new. No new subject matter is added. Claims 5-11 are allowed. Claims 1-11 and 31-34 remain pending in the application. Reconsideration and allowance of the pending claims is requested in light of the following remarks.

Allowable Subject Matter

Claims 5-11 are allowed.

In the Claims

The amendment of claim 31 is fully supported by the original application at, e.g., FIG. 4. New claim 34 is fully supported by the original application at, e.g., FIG. 4.

Claim Rejections – 35 U.S.C. § 112, second paragraph

Claim 1-4 and 31-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant disagrees.

Regarding claim 1, the Office Action states that the phrase “an overall shape that is substantially flat” is vague and indefinite as to how to define the overall shape. The Office Action then asks the question “[i]s the overall shape being referred to an entire top surface of the lower electrode?”

The focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. MPEP 2173.02.

According to MPEP 2173.02 (emphasis added), the definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) *the content of the particular application disclosure*; (B) the teachings of the prior art; and (C) the claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Furthermore, the test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed *when the claim is read in light of the*

specification.” MPEP 2173.02, *citing Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986), *emphasis added*.

In alleging the current rejection of claim 1 under 35 U.S.C. 112, second paragraph, the Office Action fails to consider the content of the particular application disclosure and fails to read the claim in light of the specification as required by MPEP 2173.02.

If the guidelines identified above are followed, the recited feature of “a lower electrode that has an overall shape that is substantially flat” meets the threshold requirements for clarity and precision. For example, please refer to the lower electrode 125b that is illustrated in FIG. 4, which clearly illustrates a lower electrode having an overall shape that is substantially flat. By referring to the lower electrode 125b of FIG. 4, the applicant believes that the question posed by the Office Action “[i]s the overall shape being referred to an entire top surface of the lower electrode?”) may be successfully answered.

For the above reasons, the applicant traverses the rejection of claims 1-4 under 35 U.S.C. 112, second paragraph (indefiniteness).

Claim 31 is amended to traverse the rejection under 35 U.S.C. 112, second paragraph (indefiniteness). Claims 32-33 depend from claim 31, and are allowable for at least the same reasons as claim 31.

New Claim 34

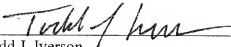
New claim 34 depends from claim 31.

Conclusion

For the reasons presented above, reconsideration and allowance of the pending claims is requested. Please telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

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